

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA)
)
)
v.) Case No. 1:06-cr-68-002
)
DEON TERRELL SIMS)

MEMORANDUM

Before the Court is the defendant's motion [Doc. No. 93] for a new trial pursuant to Fed. R. Crim. P. 33. Defendant Deon Terrell Sims went to trial on January 23, 2007, on three counts of an indictment charging various drug offenses. Defendant was acquitted by the jury on the drug trafficking conspiracy charged in Count One. However, he was convicted on Count Three of aiding and abetting the distribution of five grams or more cocaine base ("crack"). He was also convicted on Count Six of the lesser included offense of simple possession of cocaine base (no specified quantity) in violation of 21 U.S.C. § 844(a).

Defendant Sims contends that the evidence presented at trial did not support the verdict. In deciding this issue the Court must determine whether the jury's verdict is against the manifest weight of the evidence. Under Fed. R. Crim. P. 33, the Court considers the credibility of the witnesses and the weight of the evidence to ensure that there is not a miscarriage of justice. *United States v. Solorio*, 337 F.3d 580, 589 n. 6 (6th Cir. 2003); *United States v. Lutz*, 154 F.3d 581, 589 (6th Cir. 1998); *United States v. Ashworth*, 836 F.2d 260, 266 (6th Cir. 1988).

On Count Three the proof was that defendant Sims (a.k.a. "Fathead") was driving an automobile when a confidential informant purchased crack cocaine from co-defendant Jeffery Toney

Woods, a.k.a. "Gapper" who was a passenger in the vehicle. Defendant Sims was seen hanging out on the front porch of Woods' house 15 to 20 minutes after this drug transaction. Defendant Sims was observed being with Woods a number of other times as well. On Count Six the police had an arrest warrant for both Woods and defendant Sims. After doing a controlled buy of crack cocaine from Woods, the police arrived at Woods' house, finding defendant Sims there with a small amount of crack (2.3 grams, otherwise known as an "eightball") in his pocket.

In sum, there was more than sufficient evidence for the jury to make the findings of guilt on both Counts Three and Six. With regard to Count Six, the jury carefully deliberated and determined that defendant Sims was only guilty of the lesser included offense of simple possession of crack cocaine under 21 U.S.C. § 844(a) rather than the offense charged, possession of crack cocaine with intent to distribute. After reviewing the record, the Court concludes that the jury's verdict is correct and it is not a miscarriage of justice. Accordingly, an order will enter denying the defendant's motion for new trial.

SO ORDERED.

ENTER this the 3rd day of April, 2007.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE